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Our Bureau of Information

Our Bureau of Information is maintained, for the benefit and assistance of attorneys, to answer questions relating to the statutory requirements imposed upon foreign and domestic corporations by the various states and the provinces of Canada.

No charge is made for answering questions as to the statutory requirements imposed upon foreign corporations as a prerequisite to "doing business" in any jurisdiction, the cost of obtaining licenses to do business, the rates of entrance fees or annual license fees or franchise taxes, statutory penalties or disabilities for "doing business" without license, etc.

Similarly, information is furnished as to the cost of incorporation, statutory requirements as to number and qualifications of incorporators and directors, as to corporate names, franchise taxes, etc.

Our collection of data on these subjects is at the service of all Members of the Bar. We believe its use by our friends will save them time and effort. If it results in closer business relations, we shall be pleased, but the service is not offered with a view to placing any obligation whatever upon attorneys whom we may have the pleasure of serving.

THE CORPORATION TRUST COMPANY

IN CALIFORNIA it appears to be the settled law that a notice of a special meeting of directors need not specify the object of the meeting. Waratah Oil Co. v. Reward Oil Co., 139 Pac. 91.

CHANGING THE NUMBER OF DIRECTORS OF A CALIFORNIA CORPORATION is permitted by Sec. 290 of the Civil Code by vote of "a majority of the stockholders." This is held by the Supreme Court of that State to mean a majority in interest of the stockholders, and not a majority in number only. The fact that Sec. 362 of the Code requires a two-thirds vote to amend the charter does not alter the provision of Sec. 290 for changing directors by majority vote. Bank v. Jordan, 139 Pac. 691.

THE RESPECTIVE RIGHTS AND POWERS OF CANADIAN CORPORATIONS, that is as between those formed under the Dominion law and those formed under Provincial laws is a subject of much doubt and question. The Governor-General-in-Council recently referred seven questions dealing with this subject to the Supreme Court of Canada. The answers are far from satisfactory. The six judges seem unable to agree as to whether a provincial corporation may be formed to carry on business in more than one province or whether it is limited in its operations to the province in which it is incorporated, but a majority of the judges held that such a corporation may in the ordinary course of business incident to its main business in the province extend its operations beyond the limits of the incorporating province. The consensus seems to be that a province cannot exclude a Dominion company from its jurisdiction or require it to obtain provincial sanction or authority for the exercise of its corporate powers, but may impose a license fee for doing business within its borders where the requirement of a license is a *bona fide* exercise of the taxing power of the province. 15 Dom. L. R. 332.

THE ANNUAL REPORT IN COLORADO must be filed by every foreign corporation doing business in that state whether or not it has obtained proper authority to do business therein. In a recent case it was contended that since the corporation had not complied with the foreign corporation law of the state and had therefore not submitted to its jurisdiction its officers and directors could not be held liable for failure to file the annual report, the only penalty which could be enforced being that for doing business without authority. The Colorado Supreme Court held, however, that the provisions of Sec. 911 of the Revised Statutes of 1908, requiring the annual report applied none the less to the corporation and having failed to file the report in 1910 the directors became personally liable for debts of the corporation contracted during the preceding twelve months. Actions to enforce this penalty must be commenced within one year "next after the offence is committed." The court holds this to mean one year after the last day designated by law for filing the report. Nolds et al v. Hendrie & Bolthoff Mfg. Co., 138 Pacific 22. See Corporation Trust Company Journal No. 43 for reference to previous cases.

WHEN IS THE ERECTION AND INSTALLATION OF MACHINERY INTERSTATE COMMERCE? This question, important to manufacturing and contracting companies, was commented upon by the United States Supreme Court in a recent case. Browning v. City of Waycross (Ga.). Case No. 259, decided April 6, 1914, not yet reported. Browning was the agent for a St. Louis corporation on whose behalf he had solicited orders for the sale of lightning rods. The price paid for the rods included the duty to erect them without further charge. The rods were shipped from St. Louis to Browning and he erected them for the corporation. The court held this to be "doing business" in the City of Waycross, because the affixing of the lightning rods to houses was merely the doing of a local act after the interstate commerce had completely terminated, and it was not within the power of the parties by the form of their contract to convert what was exclusively a local business, subject to state control, into an interstate commerce business protected by the Commerce clause. The court intimates that an act is intrastate in character when it attempts to

connect interstate commerce articles with, or to make them a part in the state of property which is not and cannot be the subject of interstate commerce, but concludes by saying:

> "Of course we are not called upon here to consider how far interstate commerce might be held to continue to apply to an article shipped from one State to another, after delivery and up to and including the time when the article was put together or made operative in the place of destination in a case where because of some intrinsic and peculiar quality or inherent complexity of the article, the making of such agreement was essential to the accomplishment of the interstate transaction."

A FOREIGN CORPORATION IN IDAHO is required by the laws of that state, before doing business therein, to file a copy of its charter with the recorder of the proper county and with the secretary of state and "no contract or agreement made in the name of or for the use or benefit of such corporation prior to the making of such filings * * * can be sued upon or enforced in any court of this state by such corporation." (Revised Code of Idaho, Sec. 2792). The Federal Circuit Court of Appeals, Ninth Circuit, makes this comment on the provision of law quoted above: "It is uniformly held that notwithstanding a provision of state law, such as that of Idaho, which does not declare void a contract made before obtaining the necessary certificate of compliance with the local law, the corporation may enforce the contract in the federal courts." Continental, etc., Bank v. Corey Bros. Const. Co., 208 Federal 976.

THE BLUE SKY LAW OF IOWA, Chapter 137, Laws of 1913, one of the most sweeping acts recently enacted to control and regulate the sale of stocks and bonds, has been declared unconstitutional by the District Court of that State in and for Polk County. The Court in its opinion says: "This court is firmly and abidingly satisfied that the object of this law was to prevent fraud, and is in full sympathy and accord with that object. But can it be said that the right and the duty of the state to prevent fraud is legitimately exercised by an express prohibition of those transactions which are in fact honest and devoid of any fraud?" The act attempted to prevent any investment companies, stock brokers or others, except banks, from selling any stocks, bonds or other securities of any kind or character, except national and state bonds, etc., without obtaining a permit from the Secretary of State and submitting to his regulation and control. The court held that it is established beyond contention, that the legal owner of property has, inherent in his right of property, the right to sell it and that a citizen under the liberty provided for by the 14th amendment of the Federal Constitution, has the right to engage in any legitimate business so long as the transaction is not involved in the police power of the state. The attempt of the legislature to regulate sales of stock without regard to the character of the transaction could not be justified under the police power of the state. It was also held that the act interfered with the Interstate Commerce Clause of the Federal Constitution in that it attempted to regulate the sales of stock by investment companies and others from sister states. To do so imposes a burden on interstate commerce not justified by the character of the transactions. The court also considered the law to be discriminatory between citizens of Iowa and citizens of other states in that it permits residents of the state to sell securities owned by them "when not made in the course of continuing or repeated transactions of a similar nature," without obtaining a permit, but does not permit non-residents to enjoy this privilege. The Secretary of State was given very broad powers under the law to permit the sale of securities when in his judgment the charter, by-laws and plan of business of an investment company were fair, just and equitable and in the opinion of the court the power so conferred on the Secretary of State was a delegation of legislative and judicial power not permitted by the Iowa Constitution. The court quotes extensively from the opinion of the U. S. District Court in Michigan which recently held the Blue Sky Law of that state to be unconstitutional and void. (See Journal No. 43). The title of the Iowa case is L. S. Harper vs. W. S. Allen, et al.—Not yet reported.

THE EXTREME IMPORTANCE OF THE AGENT FOR SERVICE OF PROCESS required by the laws of almost all the states to be appointed by foreign corporations is illustrated by a recent case in Kentucky, S. B. Reese Lumber Co. v. Licking Coal & Lumber Co., 161 S. W. 1124. The former company was sued by the latter to recover a sum of money alleged to be due for timber sold and delivered. Service was made on the Reese Company by delivering a copy of the summons to one Cook who was shown by the records in the office of the Secretary of State to have been appointed agent for service of process in any suit which might be brought against the company in the State of Kentucky. But at the time the summons was served Cook was no longer connected with the company and failed to notify it of the service. Consequently it did not appear to defend the suit, judgment was rendered against it and its property was about to be sold to satisfy the judgment before the company became aware of the state of affairs. The Reese Company then commenced an action to have the judgment set aside, contending that the money was not due and owing from it and that by "unavoidable casualty or misfortune" it had been prevented from appearing and making defense to the action. The Court of Appeals of Kentucky held, however, that since the company had by instrument filed in the office of the Secretary of State duly appointed Cook as its agent and had not filed any statement showing a change of agent, Cook was still the proper party on whom to serve process. Both the company and its agent, Cook, according to their own showing had been guilty of negligence; the former in failing to advise the public through the filing of the necessary written statement with the Secretary of State that Cook was not its agent or the proper person on whom to serve process, and the latter in failing to notify the company of the service of summons upon him. Failure to appear and defend the former action being due to the negligence of the company and its agent the request for a new trial was refused.

THE ANTI-TRUST LAW OF KENTUCKY has been declared unconstitutional. Several laws relating to combinations are on the statute books of that state. (Act of May 20, 1890, Const. of 1891, Sec. 198, Act of March 21, 1906 and Act of March 13, 1908.) Construing the Acts of 1890 and 1906 and the constitutional provision together, the Court of Appeals of Kentucky reached the conclusion that they were to be taken to make any combination for the purpose of controlling prices lawful unless for the purpose or with the effect of fixing a price that was greater or less than the real value of the article. This was taken by the United States Supreme Court to be the established construction of the acts taken together and upon which they would stand or fall. It seems that since 1902 the price of machinery sold in Kentucky by the International Harvester Company of America had risen about 15 per cent. The company defended the rise on the ground that cost of material and labor had increased about 25 per cent. The Kentucky courts held, however, that the prices were in excess of the real value because the economy of operation through the combination more than offset the rise in cost of materials and labor. The Harvester Company accordingly was fined in three different counties for having combined to fix the price of its products in excess of their real value. The company appealed to the Supreme Court on the ground that the Kentucky law violated the fourteenth amendment to the Federal Constitution and contended that the law offered no standard of conduct that it is possible to know. The Kentucky courts had held that the "real value" was "the market value under fair competition and under normal market conditions" which, in the present case, would be a price from which all effects of the combination had been eliminated. The Supreme Court held that to determine such an ideal price, taking into consideration the many factors which would enter in under radically different circumstances, is a problem that no human ingenuity could solve, and that nine years after it was incorporated, a combination invited by the law cannot be required to guess at its peril what its product would have sold for if the combination had not existed and nothing else violently affecting values had occurred. The law was, therefore, declared unconstitutional. International Harvester Company of America v. Kentucky, decided June 8, 1914.—Not yet reported.

WORKMEN'S COMPENSATION IN KENTUCKY. The new Workmen's Compensation law (Chapter 73, Laws of 1914) becomes effective between employer and employe, January 1, 1915. A Workmen's Compensation Board is created, consisting of the Attorney General, Commissioner of Insurance, Commissioner of Agriculture, Labor and Statistics. As coming within the provisions of the act twenty-two classes of occupations intended to include all of the so-called hazardous employments are definitely specified. A twenty-third class includes, "such works or occupations not specified in the foregoing classifications in connections with which employer and employes shall voluntarily apply to the commission for the benefit and protection of this Act." Each employer electing to claim benefits of the act pays into a "Fund" premiums based on degree of hazard of business in which he is engaged and his gross annual pay roll. The Board may re-classify industries and change rates on or before first days of January and July of each year. For the first year the rate is not to exceed $1.25 on each $100 of the gross annual pay roll of each employer in any class. Employes are conclusively assumed to have contracted with employer to accept provisions of act and to waive all causes of action against such employer conferred by the constitution or statutes of Kentucky or by common law, occurring through the negligence of the employer or his agents, if the employe has continued to work for employer and the employer has served notice by posting printed or typewritten notices in conspicuous places about his place of business of his election to pay into the Workmen's Compensation Fund. Any employe may elect not to accept benefits of the new law, in which event, in case of injury to him, the defenses of assumption of risk, contributory negligence and negligence of a fellow servant are permitted to the employer in any action which may be brought. If employe recovers by such suit and the employer is not in default of his payments to the fund, the Board pays on the judgment not exceeding a sum equal to the amount which the injured employe, or his dependents in case of death, would have been entitled to recover if he had elected to accept the benefits of the act. Employers electing not to pay into the fund or who are in default are liable to their employes for damages and may not avail themselves of the assumption of risk, fellow servant and contributory negligence defenses. Provisions are made for the payment of varying amounts based on weekly wage for varying periods depending on seriousness of injury received; and for certain payments to dependents in case of death. No agreement by an employe to waive his rights is valid nor is an agreement on his part to pay any portion of the premiums paid by his employer to the Fund. An employer may carry his own risks, if on application the Board approves, in which case he shall have the benefit of all the provisions of the new law. If employer and employe cannot come to an agreement the employe may submit his claim to Board, which designates one of its members to investigate and endeavor to satisfactorily settle claim. If right of employe to participate in Fund is denied or employer feels that award should not have been granted, appeal may be made to circuit court and from there to Court of Appeals. The State Treasurer is the custodian of the Workmen's Compensation Fund.

A PROPOSED NEW CORPORATION LAW OF LOUISIANA has been prepared by the Commission appointed by the Governor under Act 150 of the Session of 1912, and was submitted to the Legislature on June 1, 1914. The proposed law embodies several most modern ideas, such as placing on public record a description of the property for which stock is issued and providing that such stock so issued shall, in the absence of fraud, be full paid stock. Each stockholder is to be entitled to vote in person or by proxy or he may "send his vote by letter." Jurisdiction is proposed to be conferred on the courts, among other things, to compel directors and officers of domestic and foreign corporations to account for their conduct in the management and disposition of the funds, property and business committed to their charge; to compel payment by them to the corporation and its creditors of any sums which they may have lost or wasted by any violation of their duties or abuse of their powers; to revise and regulate salaries of officers and agents and to remove directors or officers for gross misconduct.

LOUISIANA'S WORKMEN'S COMPENSATION: On June 18, 1914 the governor of Louisiana approved the Workmen's Compensation Act passed by the legislature (House Bill 150: no chapter number assigned yet). The provisions of the law become effective January 1, 1915. Applies to (1) state, parish, township, city, village and other political subdivision employes other than officials, (for this class the provisions are obligatory); and (2) to employes in all hazardous occupations. Employers and employes not in hazardous employments may contract in writing to place themselves within the provisions of the act. Employer and employe, one or the other or both may elect not to place themselves under the provisions of the act. In case of accident if the employer has not accepted the act but the employe has done so the common law defenses of assumption of risk, contributory negligence, and the negligence of a fellow employe are not permitted. If however the employer has accepted the act but the employe has rejected the provisions, such defenses are permissible. The usual provisions as to notice, medical attendance, scale of compensation, dependents, claims, disputes, appeals, etc., are embodied in the act. All insurance of the compensation called for by the law shall be deemed to be written subject to the provisions of the act and all forms of policies are to be approved by the Secretary of State.

WORKMEN'S COMPENSATION IN MARYLAND. Chapter 800, Laws of 1914, repealing certain acts, amending others and enacting a new law constitutes the Workmen's Compensation Law of Maryland. A State Industrial Accident Commission is created to consist of three members to be appointed by the Governor. The provisions of the act are intended to cover extra-hazardous employments of which 42 classes are specified, and "in addition to the employments set out in the preceding paragraphs, this act is intended to apply to all extra-hazardous employments not specifically enumerated herein." Any employer and his employes engaged in any kind of work may jointly elect to accept the provisions of the act The employer must secure compensation to his employes by (1) insuring payment in the State Accident Fund, (2) insuring payment in a qualified insurance company, (3) furnishing satisfactory proof to the Commission of his ability to pay compensation himself, depositing with the Commission such securities as may be required. Employers must by November 1, 1914, signify their election of one of the three methods specified, subject to the approval of the Commission. Employers failing to make choice by November 1 will be compelled by the Commission to insure payment by insuring in the State Insurance Fund. If this is not done within 10 days a penalty equal to six months insurance is incurred, to be collected by civil action. The Commission is authorized to create a State Accident Fund to consist of the quarterly premiums paid into it by employers, the amount of such premium being dependent on the degree of hazard and a prescribed percentage of the total wages paid by the employer during the preceding quarter. With the Commission rests the power to classify and reclassify occupations according to degree of hazard and to determine amount of premiums to be paid by each. Provision is made for the creation of a surplus fund sufficiently large to cover the catastrophe hazard. The State Treasurer is custodian of the Fund. As soon as practicable after December 31, 1917, and annually thereafter, the administration expenses of the Commission for the preceding calendar year are to be determined and covered by increasing the premiums proportionately. Until then State appropriations are to cover these expenses. Compensation for various injuries and death are specified and provision is made for medical, surgical and other attendance or treatment. Neither employer nor employe may exempt himself from the burdens or benefits of the act and no agreement on part of employe to pay any portion of the premiums is valid. The Commission is authorized to investigate claims and complaints, to hold hearings, etc. Appeal lies from decision of Commission to Circuit Court of County or to Common Law Courts of Baltimore, and from there to Court of Appeals. Employers are liable for damages in all cases except when injury is due to wilful intention of injured employe or another or to intoxication of the injured employe while on duty. The liability prescribed by the act is exclusive, but if an employer has failed to secure

payment in one of the specified ways the employe, or his legal representative in case of death, may elect to claim compensation under this act or to maintain an action for damages; and in such an action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employe assumed the risk of his employment, or that the injury was due to the contributory negligence of the employe.

THE EXCISE TAX ON CORPORATIONS IN MASSACHUSETTS will be increased on corporations having a capital over $10,000,000, if House Bill No. 2641 becomes a law. Heretofore the tax has been 1/50 of one per cent. upon the authorized capital stock of foreign corporations, but the maximum amount of such excise tax was limited by the statute to $2,000. The proposed law provides that foreign corporations shall pay in addition to this tax an excise tax of 1/100 of one per cent. of the par value of its authorized capital stock in excess of $10,000,000. The bill was introduced as a result of the recommendation in the message of the Governor to the Massachusetts Legislature on January 8 and at the present writing has passed both branches of the Legislature.

FAILURE TO FILE THE ANNUAL REPORT IN MICHIGAN is penalized by suspending the corporate powers, and refusing the protection of the courts in enforcing any contracts made by the corporation, during the period of default. The directors who neglect or refuse to make such report are made personally liable for all the debts of the corporation contracted since the filing of the last report and for damages to the corporation occasioned by their refusal or neglect to file the report. The Supreme Court of Michigan holds that this liability of the directors is limited to the debts incurred since the filing of the last report up to and including the last day fixed by statute for filing the subsequent or current report. This date is March 11. Thus where debts were incurred in April, 1911, and the corporation was adjudged bankrupt in June, the directors could not be held personally liable for the debts on the ground that the report for 1910 had not been filed. Continental & Commercial Nat. Bk. v. Emery et al., 146 N. W. 303.

THE ANTI-TRUST LAWS OF MISSOURI (Sec. 10301, Rev. Stats. 1909, Sec. 8966, Rev. Stats. 1899) have been construed by the courts of that State to be "limited in their scope and operations to persons and corporations dealing in commodities and do not include combinations of persons engaged in labor pursuits." (State v. Standard Oil Co. 218 Mo. 1, 370, 372.) The statutes were recently attacked by the International Harvester Company in the United States Supreme Court on the following grounds: (1) the statutes as so construed unreasonably and arbitrarily limit the right of contract; (2) discriminate between the vendors of commodities and the vendors of labor and services, and (3) between vendors and purchasers of commodities. The court holds as to the first contention there is nothing in the Constitution of the United States which precludes a State from adopting and enforcing a policy of precluding combinations which tend to defeat full and free competition even though it may be shown that the public has been benefited—not injured—as a result of a combination of competing companies. Answering the second and third contentions, the court says: "Whether the Missouri statute should have set its condemnation on restraints generally, prohibiting combined action for any purpose and to everybody, or confined it as the statute does to manufacturers and vendors of articles and permitting it to purchasers of such articles; prohibiting it to sellers of commodities and permitting it to sellers of services, was a matter of legislative judgment and we cannot say that the distinctions made are palpably arbitrary, which we have seen is the condition of judicial review. It is to be remembered that the question presented is of the power of the legislature, not the policy of the exercise of the power. To be able to find fault, therefore, with such policy is not to establish the invalidity of the law based upon it." International Harvester Company v. Missouri, decided June 8, 1914, Case No. 166.

THE FOREIGN CORPORATION LAWS OF MISSOURI provide in part that "no foreign corporation, * * *, which shall fail to comply with said sections, (Secs. 3037-3040, R. S. 1909) can maintain any suit or action, either legal or equitable, in any of the courts of this state, upon any demand, whether arising out of contract or tort." The Supreme Court of Missouri has held that this provision is void under the Missouri and the Federal Constitutions. The rule seems to be that the courts will take cognizance of an action brought by any foreign corporation and if it appears that the corporation has done business in the state without complying with Secs. 3037-3040, the courts will declare every contract in furtherance of such business void. Parke Davis & Co. v. Mullett, 149 S. W. 461. But the corporation may sue in replevin to regain possession of property which has changed hands under such void contract, provided it can place the other party to the transaction in *statu quo*. United Machinery Co. v. Ramlose, 132 S. W. 1133; Roeder v. Robertson, 100 S. W. 1086. Likewise, if a contract proposed to be entered into in Missouri would be null and void because of failure of one of the parties, a foreign corporation, to comply with Secs. 3037-3040, it seems such corporation may sue and recover a sum of money deposited with a stakeholder as part consideration of such contract, despite the fact that it has been guilty of non-compliance. British, etc., Cement Co. v. Citizens' Gas Co., 164 S. W. 468.

THE FEE FOR FILING THE CHARTER OF A FOREIGN CORPORATION IN MONTANA is based upon the authorized capital stock (Revised Codes, Section 165). In the case of C. M. & St. P. Ry. Co. v. Swindlehurst, 47 Mont. 119, 130 Pac. 966, it was held that Section 165 above in so far as it applied to foreign corporations seeking to engage in interstate commerce in Montana was inoperative and void. In a more recent case, State ex rel. General Electric Co. v. Alderson, Secretary of State, 140 Pac. 82, the court held that while Section 165 does not have any application to foreign corporations seeking to engage in interstate commerce in the state it does apply to foreign corporations seeking to do local, private business therein. In the case last referred to the General Electric Company was denied admittance to the state unless a fee of $10,322.86 was paid, which amount was determined by applying the rate prescribed by Section 165 of the statute to the entire authorized capital stock of the company. The company admitted that it intended to do a strictly private, local or intra-state business in Montana, but insisted, however, that the filing fee prescribed by Section 165 is invalid because it seeks to impose a tax upon property situate without the jurisdiction of the taxing power of the state, all of the property of the company, represented by its capital stock, being located in states other than Montana. The court held that the filing fee is not a property tax, but an excise tax, and is valid under the rule of Baltic Mining Co. v. Commonwealth of Massachusetts, 231 U. S. 68, and said in part: "It may be that our legislation is unwise in failing to fix a reasonable limit upon the amount to be exacted from any one corporation; but, if the authority is lodged in the state to exclude the relator altogether or to impose such terms to its admission here as may seem expedient, then the amount of the fee affords no tenable ground of opposition to the validity of the statute. If the amount demanded is more than the local, private business of relator will justify it paying, the tax can be avoided altogether by a renunciation of its intention to do such business. The state does not seek to compel it to engage in business here, nor does it attempt to collect this fee in the sense that property taxes or ordinary debts may be enforced. It merely says to the relator: You may engage in local, private business in Montana if you conform to the conditions imposed; otherwise you must stay out. * * * Whatever may finally be determined to be the extent of state control of a foreign corporation situated as relator is, we are satisfied that the exaction demanded in this instance does not infringe upon any right of this relator which is guaranteed to it by the constitution or laws of the United States, * * * ."

MERGER OF NEW JERSEY CORPORATIONS. Under the provisions of Chapter 19, Laws of 1913, before any merger of New Jersey corporations can be made the approval of the Board of Public Utility Commissioners shall be obtained and filed in the office of the Secretary of State.

In the case of American Malt Corporation et al. vs. Public Utility Commissioners, decided May 28, 1914, not yet reported, the Supreme Court of New Jersey declared this act to be constitutional and upheld the action of the Board of Public Utility Commissioners in refusing approval of the merger and consolidation of the American Malt Corporation and American Malting Company.

The Board of Public Utility Commissioners in its report held that Chapter 19, relating to mergers, should be interpreted in consonance with Chapters 13 to 18, both inclusive, of the Laws of 1913, popularly referred to as the "Seven Sisters," and that in every case of merger before it for approval, the company resulting from such merger should be required to show at the time of merger (1) assets behind its securities in amount sufficient to conform with the requirements imposed by the state upon companies newly incorporating under its laws; (2) that such a merger must not by any of its terms subject any security holder in any of the consolidating or merging companies to an unfair or inequitable condition or arrangement; (3) that in the carrying out of such merger it must be affirmatively shown that each and every statutory requirement applicable in the premises has been complied with.

The Board decided that the assets of the company formed by the merger were not sufficient to warrant the capital stock proposed to be issued. Preferred stockholders contended that the proposed plan of merger was unfair and inequitable to them and the Board held that the burden rested upon the petitioners to establish the fact that the proposed plan was fair and equitable and in all probability the best obtainable for all concerned.

In sustaining the order of the Board of Public Utility Commissioners, the Supreme Court said in part:

"I think it may safely be sustained on two grounds: (1) that the scheme of merger involves the issue of stock for less than its par value; (2) it is unfair to the preferred stockholders of the Malting Company.

(1) Although the Malt Corporation owns most of the stock of the Malting Company, and as to that no material change is proposed, it will nevertheless be necessary to issue some stock of the Malt Corporation for some stock of the Malting Company, which is worth less than the par value of the stock proposed to be issued therefor. I am not impressed by the argument drawn from the broad language of section 109. If that argument is to be pressed to its logical result, the merging corporations may determine for themselves how much stock they will issue and how small a payment they will accept therefor; two corporations may accomplish therefore, by merger what neither could do alone and issue stock for property worth less than its par value. It needs no argument to show that the necessary result would be to do away with the provisions of the act requiring money or money's worth. Such cannot have been the legislative intent. I think section 109 must be read in connection with the rest of the act and that money or money's worth is required for stock issued upon a merger as well as in other cases.

(2) I am persuaded also that the proposed merger is unfair to the preferred stockholders of the Malting Company for the reasons stated in Mr. Ordway's brief. It is said that the objection on this score is the proper subject for action by the court of chancery, and that equity powers cannot be conferred upon the Commissioners. I do not regard the case as one where judicial power is conferred upon an administrative body. The legislature has seen fit to require the approval of the Commissioners as a condition precedent to a merger. I see no reason why their refusal to approve may not properly be based upon the fact that the scheme is such, that upon recourse to a proper tribunal, it would be enjoined. Surely it is not for this court to say that their refusal to approve in such a case should be set aside. Their approval would not prevent action by the court of chancery. In short the action of the Commissioners is no adjudication of the rights of the parties, but a mere step in administrative procedure which is subject to control by the courts."

INSPECTION OF STOCK BOOKS OF FOREIGN CORPORATIONS IN NEW YORK. In our Journal No. 29 we referred to a decision of the Supreme Court, Appellate Division (Hovey v. DeLong Hook and Eye Co., 147 App. Div. 881) in which Sec. 33 of the Stock Corporation Law, requiring every foreign corporation "having an office for the transaction of business in this State" except moneyed and railroad corporations to keep a stock book therein open to the inspection of stockholders, was held to apply to foreign corporations engaged solely in interstate commerce as well as to those engaged in intrastate business. The Court of Appeals has recently reversed the judgment of the court below, holding that the words quoted above should be construed in harmony with the meaning given to similar words in those sections of the corporation and tax laws which prescribe the terms upon which foreign corporations may "do business" in New York, and that a foreign corporation engaged in interstate commerce is under no statutory duty to keep such stock book although it may incidentally have an office in the state. Hovey v. DeLong Hook and Eye Co., Court of Appeals, Decided June 2, 1914.—Not yet reported.

INCREASING THE NUMBER OF DIRECTORS of a New York corporation is provided for by Sec. 26 of the Stock Corporation Law of that State. This section requires that a transcript of the proceedings of the meeting of stockholders at which the number of directors is changed must be filed in the offices where the original certificates of incorporation were filed. It also provides that: "If the number of directors be increased, the additional directors authorized by such increase shall be elected by the votes of a majority of the directors in office at the time of the increase." This provision despite the mandatory character of its language, does not prevent the stockholders from electing the new directors. Strict adherence to the procedure prescribed by the statute would require the election of the new directors to take place after the transcripts above referred to had been filed with the secretary of state and the proper county clerk, but an election which takes place before that time is not void, being at most irregular, to be corrected in a direct proceeding for that purpose, or sufficient to justify the court in ordering a new election. Lewis v. Matthews et al., 146 N. Y. Supp. 424.

RE-ENACTMENT OF THE NEW YORK WORKMEN'S COMPENSATION LAW. On November 4, 1913, the people of New York voted favorably on an amendment to the State constitution giving to the Legislature the power to enact laws for the protection of employes and for compensation for injury or death of employes. By authority of this amendment the Legislature of 1913 passed a Workmen's Compensation Act (chapter 67 of the Consolidated Laws and summarized in the Corporation Trust Company Journal, No. 43) to take effect January 1, 1914, which act was approved by the Governor on December 16. The Constitution, however, provides that amendments thereto become effective on January 1 next following their approval by the people. The force of the law passed and approved before the constitutional amendment giving the Legislature authority to enact became effective, being open to question, an act embodying the 1913 law without change other than the correction of a misspelled word and the date of taking effect (from Jan. 1, 1914, to "immediately") was passed by the 1914 Legislature and approved by the Governor on March 16, 1914. The present Act is Chapter 41, Laws of 1914. Payment of compensation under the Act begins on July 1, 1914.

A FOREIGN CORPORATION IN OKLAHOMA was held not to be "doing business" in that state where it had a branch office at Oklahoma City with the name of the company on the door and a resident manager in charge who solicited business in his territory and forwarded orders to the general offices of the company outside of the state for acceptance. The company maintained no storage or warerooms in Oklahoma. Collections made from its customers were deposited in a bank in Oklahoma City and by said bank at stated intervals transferred to the company's New York

office. No one connected with its branch office within the state had any authority to check against said deposits, and its local employes were paid upon vouchers sent from New York City. The court held that, "From the evidence there can be no question but that plaintiff was engaged in interstate or foreign commerce, and therefore it was not required to comply with the provisions of the act in question relating to foreign corporations doing business in this state." Fruit Dispatch Co. v. W. B. Wood and R. H. Wood, etc., Supreme Court of Oklahoma. Opinion filed May 12, 1914, 140 P. 1138.

THE LICENSE TAX OF OKLAHOMA provides that "no corporation heretofore or hereafter incorporated under the laws of this state, or of any other state, shall do or attempt to do business by virtue of its charter or certificate of incorporation in this state without a state license therefor." Section 8 of the said Act provides, in part, as follows: "Every domestic corporation subject to the provisions of this Act, who shall fail to file the annual statement and pay the annual fees required by the provisions of this Act for sixty days after the time provided therefor, shall forfeit its charter; and every foreign corporation failing to file its statement and pay the annual fees within the time required by the provisions of this Act shall forfeit its license and right to do business in this state, * * * ." The Act applies to the ordinary business corporations. The Supreme Court of Oklahoma has held, in the case of a foreign corporation duly qualified to do busniess in Oklahoma, but which has failed to file license tax report and pay the license tax, that notwithstanding the language of the Act above quoted, its contracts while in such default are not void, nor is the right to proceed in court to enforce them to be denied. Smith Rolfe Co. v. Wallace, 139 Pac. 248.

A FOREIGN CORPORATION IN OREGON is not "doing business" in the state within the meaning of its Foreign Corporation Laws by taking orders through traveling salesmen within the state subject to acceptance by the corporation at its own office without the state, although in the case at bar a promissory note was executed and delivered in Oregon in payment of such goods. Bertini & Lepori v. Mattison, 139 Pac. 330.

AN UNREGISTERED FOREIGN CORPORATION may bring an action for replevin in Pennsylvania for personal property owned by it in the state. There is no statute or policy of law which prevents an unregistered foreign corporation from owning personal property in this state, or from asserting its title and recovering the same in judicial proceedings; the action not being one to enforce a contract growing out of business transacted within the state under the Act of April 22, 1874, and Act of June 8, 1911. Duroth Mfg. Co. v. Cauffiel, 89 Atl. 798. 243 Pa. 24.

RECORDING THE CHARTER OF A PENNSYLVANIA CORPORATION in the county where the business is to be carried on is an essential statutory requisite to the existence of the corporation. In a recent case the charter had not so been recorded, there had been no organization of the proposed corporation and its subscriptions had been cancelled. Held that payment of the subscriptions could not be enforced by a creditors' bill in equity. Tongue v. The Item Publishing Company, Supreme Court of Pennsylvania, January Term 1913. No. 205—not yet reported.

Potter J. delivering the opinion of the Court said:

> "In Guckert v. Hacke, 159 Pa. 303, this court said: 'It is plain even from a cursory reading of the act of April 29, 1874, P. L. 77, that recording of the certificate in the office for the recording of deeds, in and for the county where the chief operations are to be carried on, was intended to be one of the conditions precedent to corporate existence.' That was the last of successive steps required to be taken, and the right to begin the transaction of corporate business was made to depend upon the taking of that step. * * * It is apparent therefore that the business of the Item Publishing Company, was not carried on as a corporation, but as a partnership. Appellees would without doubt have had a right of action against appellant as partners,

but they choose rather to sue the Item Publishing Company as a corporation. The judgment which they obtained may be considered as establishing it as a corporation de facto, but that is not sufficient to sustain a bill in equity against the subscribers to the capital stock of the proposed corporation to compel payment of the subscriptions. * * * Until the statutory requirements for the formation of a new corporation have been complied with, a subscriber to the stock is not estopped from denying the existence of the corporation.

"The plain requirement of the act of 1874 is, that the certificate of incorporation shall be recorded in the recorder's office in the county where the business is to be carried on. If the record in that office had been examined * * * it would have readily appeared whether or not such a corporation was in existence. Such an examination would have shown that an essential statutory requisite to the existence of such a corporation had been omitted * * * and it would follow, that the subscribers to the stock were not liable on their subscriptions. If they were carrying on the business as a corporation de facto, they would be liable as partners * * * but they were not sued as such, and no service of process was made upon them individually."

LIABILITY OF STOCKHOLDERS FOR BONUS STOCK. The Supreme Court of Washington holds that persons receiving shares of common stock as a gratuity upon the purchase of preferred shares are liable to the creditors upon insolvency for the par value of such stock. The acceptance of the bonus stock carries an implied promise to pay for it if it became necessary to do so. The fact that the stockholders received four shares of stock for each one they paid for was actual notice to them and precluded the defense that they were misled and bought the stock believing that it was fully paid. Gordon v. Cummings, 139 Pac. 489.

THE ORGANIZATION MEETING OF A VIRGINIA CORPORATION is required by Pollard's Code, Section 1105A (4) to be held upon ten days' notice to the subscribers to the stock unless all subscribers are present or represented or notice is waived in writing by such as are absent. Where a subscriber did not receive the notice prescribed by statute and he alone was absent from the organization meeting such failure to give due notice only rendered the proceedings voidable as to him, and the effect of a proxy subsequently signed by him which related back to and in terms covered that meeting, was to waive the irregularity and ratify the proceedings. Eichelberger v. Mann, 80 S. E. 595.

CONTRACTS OF A FOREIGN CORPORATION IN WISCONSIN ARE VOID if they affect its personal liability or relate to property within the state and are made before the corporation has complied with the requirements prescribed for doing business in the state. (Wisconsin Statutes, Sec. 1770b). Such contracts will not be enforced by the Federal Courts. In this case the Reinforced Concrete Pipe Company entered into a contract at Janesville, Wis., with the Peoples Construction Company for the manufacture of concrete pipe, agreeing to furnish all the forms and steel reinforcement required for the construction as well as the superintendent, but not the concrete or the labor. The pipe was to be manufactured in Janesville "along the line of sewer construction of said city." The Pipe Company's forms, derrick, saddle and reinforcing material were, for the purpose of this work, shipped to Janesville from outside the state. The Pipe Company had no office or general place of business in Wisconsin. The transaction was held not to be one of interstate commerce. Although it was an isolated transaction the law related to it, the Wisconsin rule being that "a single contract falls within the ban of the statute." The contract was made in Wisconsin and it affected the personal liability of the Pipe Company, hence neither it nor its assignee were entitled to recover. Loomis v. Peoples Const. Co., 211 Fed. Rep. 453, U. S. Circuit Court of Appeals, Sixth Circuit.

UNDER THE WISCONSIN INCOME TAX LAW it has been held that dividends declared and distributed after the law went into effect, out of surplus on hand prior to that date, are taxable in the hands of the

recipient, on the ground that it was immaterial when the profits were earned by the corporation; they became income to the stockholders when distributed as dividends, but not before. Van Dyke v. City of Milwaukee, 146 N. W. 812. The Treasury Department has taken a different position with reference to the Federal Income Tax, holding that where profits had been declared to surplus prior to March 1, 1913, dividends distributed after that date from such surplus are not subject to the normal or additional tax.

THE FEDERAL INCOME TAX IS DUE AND PAYABLE on or before the thirtieth day of June. If unpaid after that date and after ten days' notice and demand thereof by the Collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month from the time the same became due (Act of Oct. 3, 1913). Where in any case the tax assessed is not paid on or before the 30th day of June, or in case of corporations designating their own fiscal year, within 120 days following the date on which the return should have been filed, notice and demand (Form 17) is to be at once issued by the collector and unless the tax in such case is paid within ten days after the service of such notice, it is the collector's duty to issue immediately a demand for the tax, the penalty and the interest. (Regulations No. 33, Art. 197).

WITHHOLDING THE FEDERAL INCOME TAX ON SALARIES. From inquiries directed to us it appears that a large number of corporations are not aware of the liability incurred for failure to deduct and pay over to the Government 1 per cent. of the salaries of employes under circumstances indicated in the federal income tax law and the regulations and rulings of the Treasury Department. A brief statement of the duty of corporations may be opportune at this time.

All employers paying salaries, wages or other fixed or determinable annual compensation to another exceeding $3,000 for any taxable year are required to deduct and withhold such sum as will be sufficient to pay the normal tax (1 per cent.) and pay the same to the proper officer of the Government. There is no duty to deduct the tax from salaries or wages of $3,000 or less.

If the compensation is not fixed or certain and not payable at stated periods, as for instance commissions to salesmen, the employer is not required to deduct the tax, even though weekly payments of a fixed amount may be paid to the salesmen for expenses or in the way of advances on commissions.

When salaries or wages are paid weekly, monthly or periodically during the year, the employer should not deduct any amount until the aggregate of the sums so paid exceeds $3,000.

From the first payment which brings the total salary or wage for the year over $3,000 the employer should deduct 1 per cent. of the total amount paid up to that time and 1 per cent. from each subsequent payment during the year, unless the employe files with him form 1007, claiming exemption of $3,000 or $4,000. In that event the employer deducts only on the amount of salary or wages in excess of the amount claimed to be exempt. The employe may also at the end of the year file with the employer form 1008, claiming the benefit of deductions allowed by law, and the employer then remits the tax withheld on the total sum of the deductions so claimed.

Forms 1007 and 1008 may be filed by the employe at any time up to January 29th (30 days prior to March 1st) of the year following that in which the income was received. After this date and before March 1st the employer must file his report of tax withheld during the preceding year (form 1042) with the Collector of Internal Revenue. This report must be made in duplicate. To the report should be attached all the claims for exemption on the strength of which the employer has refrained from withholding or has returned taxes withheld during the year for which the report is made.

The Government thereupon assesses the corporation 1 per cent. on the difference between the total of all salaries and wages reported and the total of the amounts claimed as exemptions. This assessment becomes due and payable on or before the following 30th of June.

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15 Exchange Place, Jersey City
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